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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,292	06/30/2003	Marcelo Gomes de Oliveira	2003P04482US	2973

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Siemens Corporation
Intellectual Property Department
170 Wood Avenue South
Iselin, NJ 08830

EXAMINER

OSMAN, RAMY M

ART UNIT	PAPER NUMBER
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2157

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06/11/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/611,292	Applicant(s) GOMES DE OLIVEIRA, MARCELO	
	Examiner RAMY M. OSMAN	Art Unit 2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. This action is responsive to amendment filed on January 10, 2008. Claims 1-15 and 17-21 remain pending.

Response to Arguments

2. In light of Applicants amendments, the previous rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made under 102(e) anticipated by Ju et al. as outlined below. Applicants arguments are moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 101

3. Claims 13-15,17 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 13, for example, recites a system that comprises a "controller". Paragraph 53 of Applicants specification mentions that the invention can be a software only implementation. Therefore, the scope of the "controller" encompasses a software only embodiment. Software is not statutory because it is simply abstract ideas and is not directed to a process occurring as a result of executing the software on an actual physical device. For a claim like this to be statutory, an actual hardware device is required. These claims do meet this criterion and are therefore deemed non-statutory. **See MPEP Chapter 2106.01 Section I**

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-15 and 17-21 rejected under 35 U.S.C. 102(e) as being anticipated by Ju et al (US Patent No 6,744,741).

6. In reference to claim 1, Ju teaches a method for selecting a media processor to host a new conference, comprising:

receiving an indication of a need for a media processor for a new conference (column 5 lines 31-45);

determining, for each of a plurality of media processors under control of a multipoint controller, a number of additional participants that can be supported (column 5 lines 49 – column 6 line 5); and

determining one of said plurality of media processors to host said new conference based, at least in part, on said number of additional participants that each of said plurality of media processors can support and based on a current CPU utilization percentage for each of said plurality of media processors (column 6 lines 6-30 and column 7 lines 50-65)

7. In reference to claim 2, Ju teaches the method of claim 1, wherein said determining, for each of a plurality of media processors under control of a multipoint controller, a number of additional participants that can be supported, includes determining a value representative of a

current number of conference participants for each of said plurality of media processors (column 6 lines 6-30).

8. In reference to claim 3, Ju teaches the method of claim 2, wherein said determining, for each of a plurality of media processors under control of a multipoint controller, a number of additional participants that can be supported, includes determining a value representative of a number of conference participants that may be supported by said multipoint processor before reaching the value representative of a current CPU utilization percentage for each of said plurality of media processors (column 6 lines 6-30).

9. In reference to claim 4, Ju teaches the method of claim 1, wherein said receiving an indication of a need for a media processor for a new conference includes receiving a request for allocation of a media processor for said new conference (column 5 lines 31-45).

10. In reference to claim 5, Ju teaches the method of claim 1, further comprising: providing data indicative of said one of said plurality of media processors (column 5 lines 62 – column 6 line 15).

11. In reference to claim 6, Ju teaches the method of claim 1, further comprising: allocating said one of said plurality of media processors to host said new conference (column 6 lines 30-50).

12. In reference to claim 7, Ju teaches the method of claim 1, further comprising: determining a value representative of a maximum CPU utilization percentage associated with each of said plurality of media processors (column 5 lines 49-61, column 6 lines 6-16 and column 7 lines 50-65).

13. In reference to claim 8, Ju teaches a method for selecting a media processor to host a new conference, comprising:

receiving an indication of a need for a media processor for a new conference (column 5 lines 31-45);

determining, for each of a plurality of media processors under the control of a multipoint controller, a current number of conference participants and a current CPU utilization (column 5 lines 49 – column 6 line 30); and

determining one of said plurality of media processors to host said new conference based, at least in part, on said current number of conference participants and current CPU utilization for each of said plurality of media processors and based on a current CPU utilization percentage for each of said plurality of media processors (column 5 lines 49-61, column 6 lines 6-30 and column 7 lines 50-65).

14. In reference to claim 9, Ju teaches the method of claim 8, wherein said determining one of said plurality of media processors to host said new conference includes selecting one of said plurality of media processors based on each of said plurality of media processors ability to support participants in said new conference (column 6 lines 1-60).

15. In reference to claim 10, Ju teaches the method of claim 8, wherein said determining one of said plurality of media processors to host said new conference includes selecting one of said plurality of media processors that can support a highest number of participants in said new conference (column 6 lines 1-60).

16. In reference to claim 11, Ju teaches the method of claim 8, wherein said determining one of said plurality of media processors to host said new conference includes determining a number

of new participants that can be supported by each of said plurality of media processors (column 6 lines 27-47 and column 7 lines 50-67).

17. In reference to claim 12, Ju teaches the method of claim 11, wherein said determining a number of new participants that can be supported by each of said plurality of media processors includes determining a value representative of a number of conference participants that may be supported by the multipoint processor before reaching the value representative of a current CPU utilization percentage for each of said plurality of media processors (column 6 lines 5-30).

18. In reference to claims 13-15,17-20, claims 13-15,17-20 are system claims that correspond to the method claims of claims 1-12. Therefore, claims 13-15,17-20 are rejected based upon the same rationale as used to reject claims 1-12.

19. In reference to claim 21, claim 21 is an article of manufacture claims that corresponds to the method of claim 1. Therefore, claim 21 is rejected based upon the same rationale as used to reject claim 1.

Conclusion

20. The above rejections are based upon the broadest reasonable interpretation of the claims. Applicant is advised that the specified citations of the relied upon prior art, in the above rejections, are only representative of the teachings of the prior art, and that any other supportive sections within the entirety of the reference (including any figures, incorporation by references, claims and/or priority documents) is implied as being applied to teach the scope of the claims.

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached Form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAMY M. OSMAN whose telephone number is (571)272-4008. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ramy M Osman/
Primary Examiner, Art Unit 2157

June 9, 2008